

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-897

IN RE:)	PLAINTIFF LEADERSHIP
CAMP LEJEUNE WATER LITIGATION)	GROUPS' REPLY TO MOTION TO
)	STRIKE DR. BAILEY'S
This Pleading Relates to:)	UNTIMELY GENERAL
)	CAUSATION OPINIONS [D.E. 787]
ALL CASES)	

Defendant's opposition [D.E. 790] to Plaintiff's motion to strike Phase III expert Dr. Lisa Bailey's untimely general causation opinions [D.E. 787] admits, as it must, that Dr. Bailey relied on her own analysis and calculations, not those of Defendant's Phase II general causation experts, to determine the levels of exposure to the Camp Lejeune toxins that may be hazardous to human health. Dr. Bailey's risk assessments for each Track 1 Plaintiff compare Defendant's calculations of each Plaintiff's exposure to the relevant toxins (which *are* Plaintiff-specific) against "toxicity criteria" (which are *not* Plaintiff-specific). The toxicity criteria are generalized measures of how much exposure to a toxin Dr. Bailey opines is below the level that can cause a disease—in other words, they are measures of general causation. Defendant's deadline to offer opinions on how much exposure to a toxin could cause a disease was February 7, 2025. But Dr. Bailey did not use calculations disclosed by that deadline for her risk assessments. Instead, she created her own general causation models that had not been previously disclosed in Phase II and thus violated the Court's scheduling orders.

Defendant admits that "Dr. Bailey used the cancer and non-cancer toxicity criteria derived by the Environmental Protection Agency ('EPA')," as well as "the Agency for Toxic Substances and Disease Registry's ('ATSDR') existing toxicity criteria for neurological effects," instead of using any calculations from Defendant's general causation experts. *Id.* Dr. Bailey said

she relied on Defendant's Phase II expert Dr. Julie Goodman, but Dr. Goodman did not disclose this data in her reports, and did not discuss toxicity criteria or points of departure ("PODs", a related general causation metric calculated by Dr. Bailey).¹ Defendant never disclosed in Phase II that it intended to use this EPA or ATSDR criteria as general causation metrics in Phase III, or how it would do so, since the agency data does not map cleanly onto the Track 1 toxin-disease pairs. For example, because "TCE cancer toxicity values specific to bladder cancer are not available," Dr. Bailey chose to apply data for kidney cancer, liver cancer, and NHL to assess bladder cancer causation, disclosing this for the first time in Phase III.² Defendant further admits that Dr. Bailey "extrapolated" and "modified" this EPA and ATSDR data, *id.*, which is a serious understatement: when toxicity criteria and PODs were not available from the EPA or ATSDR for Track 1 toxin-disease pairs, Dr. Bailey created her own, which Defendant disclosed for the first time in Dr. Bailey's Phase III reports.³

In other words, Dr. Bailey used her own judgment to select which toxicity criteria and PODs she believed were applicable to each toxin-disease pair, to modify those general causation

¹ See Goodman Rep. (Bladder) (JA Ex. 75, D.E. 463-14) (never discussing toxicity criteria or points of departure); Goodman Rep. (Kidney) (JA Ex. 94, D.E. 464-15) (same); Goodman Rep. (Leukemia) (JA Ex. 102, D.E. 465-7) (same); Goodman Rep. (NHL) (JA Ex. 117, D.E. 466-11) (same); Goodman Rep. (PD) (JA Ex. 134, D.E. 467-17) (same).

² Bailey Rep. (Cagiano) at 34 (JA Ex. 371, D.E. 490-6); *see also* Bailey Rep. (Criswell) at 35 (JA Ex. 374, D.E. 490-9) (same statement and calculations in another bladder cancer report); Bailey Rep. (Dyer) at 35 (JA Ex. 375, D.E. 490-10) (same); Bailey Rep. (Laramore) at 34 (JA Ex. 376, D.E. 490-11) (same); Bailey Rep. (Raymond) at 33 (JA Ex. 377, D.E. 490-12) (same).

Throughout this brief, Joint Appendix page numbers refer to PDF page numbers found in blue on the bottom-right of each Joint Appendix page.

³ See, e.g., Bailey Rep. (Cagiano) app. E (JA Ex. 371, D.E. 490-6) (Appendix E disclosing for the first time in Phase III Dr. Bailey's own calculation of points of departure when not available from the EPA); Bailey Rep. (Criswell) app. E (JA Ex. 374, D.E. 490-9) (identical appendix, used in all Dr. Bailey's bladder cancer reports); Bailey Rep. (Dyer) app. E (JA Ex. 375, D.E. 490-10) (same); Bailey Rep. (Laramore) app. E (JA Ex. 376, D.E. 490-11) (same); Bailey Rep. (Raymond) app. E (JA Ex. 377, D.E. 490-12) (same).

metrics when and how she thought appropriate, and to calculate her own general causation metrics when unavailable elsewhere. And none of Defendant's Phase II experts had provided the foundational reasoning or calculations for Dr. Bailey's toxicity criteria or PODs. By failing to disclose the analyses and calculations of these general causation metrics by the deadline for general causation opinions, Defendant deprived Plaintiffs' Phase II experts of the opportunity to assess and rebut them. Dr. Bailey's general causation testimony is thus untimely, prejudicial, and should be stricken under the reasoning of this Court's July 22, 2025 order [D.E. 444].

Unable to dispute that Dr. Bailey conducted her own analyses and calculations, Defendant's opposition relies on misdirection, arguing that the "risk assessments that Dr. Bailey performed based on the regulatory criteria are unique to the assumed exposure of each of the individual bellwether Plaintiffs." [DE 790] at 7. But Plaintiffs do not argue that every element of Dr. Bailey's risk assessments constitutes general causation analysis.⁴ The Plaintiff-specific exposure calculations that Dr. Bailey uses are not general causation analysis. Dr. Bailey's toxicity criteria and PODs, on the other hand, *are* general causation analysis, and they are *not* unique to each Plaintiff. As Dr. Bailey explains in every one of her reports, "Toxicity criteria are quantitative estimates of risk of the adverse health effects associated with a given chemical exposure level," "derived from . . . epidemiology or animal studies" for population-level application, *not* unique to individuals.⁵ PODs are also not Plaintiff-specific.⁶ That is why the

⁴ Plaintiffs do argue that Dr. Bailey's risk assessments are inadmissible for specific causation in the PLG's motion to exclude her testimony under Federal Rule of Evidence 702. [D.E. 624]

⁵ See, e.g., Bailey Rep. (Cagiano) at 11 (JA Ex. 371, D.E. 490-6) (bladder cancer report); Bailey Rep. (Downs) at 10 (JA Ex. 423, D.E. 494-6) (kidney cancer report); Bailey Rep. (Amsler) at 11 (JA Ex. 468, D.E. 497-1) (leukemia report); Bailey Rep. (Keller) at 11 (JA Ex. 512, D.E. 500-7) (NHL report); Bailey Rep. (Sparks) at 12 (JA Ex. , D.E. 503-9) (Parkinson's report).

⁶ See, e.g., Bailey Rep. (Cagiano) § 3.3.1.1 (JA Ex. 371, D.E. 490-6) (describing PODs in bladder cancer report); Bailey Rep. (Downs) § 3.3.1.1 (JA Ex. 423, D.E. 494-6) (nearly identical section in kidney cancer report); Bailey Rep. (Amsler) § 3.3.1.1 (JA Ex. 468, D.E. 497-1) (nearly

toxicity criteria and PODs Dr. Bailey uses for each toxin-disease pair are the *same* for every Track 1 Plaintiff with the same disease.⁷ None of this data or analysis comes from Defendant's general causation experts, and none was disclosed by the general causation deadline.

Defendant also argues that Dr. Bailey's toxicity criteria are not the type of "threshold" calculations that constitute general causation analysis. [D.E. 790] at 6-7. Defendant's semantic debate over the word "threshold" is a distraction. Regardless of terminology, Dr. Bailey's toxicity criteria and PODs are plainly testimony about "the levels of exposure that are hazardous to human beings generally," not measures of "plaintiff's actual level of exposure." *Zellers v. NexTech Northeast, LLC*, 533 Fed. App'x 192, 196 & n.6 (4th Cir. 2013) (defining the first as "general causation" and the second as "specific causation").

Finally, Defendant argues that Plaintiffs suffer no prejudice from Dr. Bailey's untimely general causation disclosures. [D.E. 790] at 9. But Defendant previously made the opposite argument to this Court. As Defendant argued in its successful motion to strike untimely general causation opinions, disclosing general causation opinions at the specific causation stage is prejudicial because the opposing party "was deprived of any opportunity to respond through its Phase II general causation experts—as the Court's phased structure intended." [D.E. 410] at 2.

identical section in leukemia report); Bailey Rep. (Keller) § 3.3.1.1 (JA Ex. 512, D.E. 500-7) (nearly identical section in NHL report); Bailey Rep. (Sparks) § 3.3.1.1 (JA Ex. , D.E. 503-9) (equivalent section in Parkinson's report).

⁷ Compare, e.g., Bailey Rep. (Cagiano) § 5.2 (JA Ex. 371, D.E. 490-6) (in bladder cancer report, tables 5.1 – 5.12 disclosing toxicity criteria and PODs for various cancers), with Bailey Rep. (Criswell) § 5.2 (JA Ex. 374, D.E. 490-9) (identical tables and calculations in another bladder cancer report); compare Bailey Rep. (Cagiano) app. E (JA Ex. 371, D.E. 490-6) (Appendix E disclosing Dr. Bailey's own calculation of PODs when not available from the EPA), with Bailey Rep. (Criswell) app. E (JA Ex. 374, D.E. 490-9) (identical appendix); compare Bailey Rep. (Sparks) § 5.2 (JA Ex. 546, D.E. 503) (in Parkinson's report, tables 5.1 – 5.23 disclosing relevant toxicity criteria and PODs), with Bailey Rep. (Welch) § 5.2 (JA Ex. 547, D.E. 503) (identical tables and calculations in another Parkinson's report).

Dr. Bailey's toxicity criteria and PODs are complex and technical, and require expertise to appropriately source, calculate, modify, and apply to the toxins and diseases at issue here. Defendant's Phase II experts (including Dr. Goodman, who Dr. Bailey says she relied upon) never disclosed the toxicity criteria or PODs Dr. Bailey used, or the foundational reasoning underlying Dr. Bailey's analyses. And as explained above, Dr. Bailey did not simply take numbers provided by the EPA or ATSDR, because they did not exist for every toxin-disease pair at issue. By disclosing these general causation analyses and metrics after the deadline for Phase II reports, Defendant deprived Plaintiffs' Phase II experts the opportunity to assess and rebut them. This Court already held that untimely general causation testimony is prejudicial, and that prejudice applies to Dr. Bailey's untimely general causation opinions as much as those of any other Phase III expert. *See* [D.E. 444] at 7.

For the foregoing reasons and those in the PLG's opening motion, this Court should grant the PLG's motion [D.E. 787] and order that Dr. Lisa Bailey's general causation opinions are untimely and must be stricken.

[Signatures appear on the following page]

Dated: January 5, 2026.

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CERTIFICATE OF SERVICE

I, J. Edward Bell, III, hereby certify that the foregoing document was electronically filed on the Court's CM/ECF system on this date, and that all counsel of record will be served with notice of the said filing via the CM/ECF system.

This 5th day of January, 2026.

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